

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ELBERT DAVIS

PETITIONER

V.

NO. 4:19-CV-161-DMB-RP

RONALD KING, et al.

RESPONDENTS

ORDER ADOPTING REPORT AND RECOMMENDATION

On February 19, 2020, United States Magistrate Judge Roy Percy issued a Report and Recommendation (“R&R”) recommending that the State’s motion to dismiss¹ Elbert Davis’ petition for a writ of habeas corpus² be granted, that Davis’ petition be dismissed as untimely filed, and that a certificate of appealability be denied. Doc. #12 at 6. On February 28, 2020, Davis acknowledged receipt of the R&R. Doc. #13. No objections to the R&R were filed.³

Under 28 U.S.C. § 636(b)(1), “[a] judge of the court shall make a de novo determination of those portions of the report ... to which objection is made.” “[W]here there is no objection, the Court need only determine whether the report and recommendation is clearly erroneous or contrary to law.” *United States v. Alaniz*, 278 F. Supp. 3d 944, 948 (S.D. Tex. 2017) (citing *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989)).

The Court has reviewed the R&R and finds that it is neither clearly erroneous nor contrary to law. Accordingly, the Report & Recommendation [12] is **ADOPTED** as the order of this Court, the State’s motion to dismiss [10] is **GRANTED**, Davis’ petition for a writ of habeas corpus [2]

¹ Doc. #10.

² Doc. #2.

³ On or about March 12, 2020, Davis filed a second petition. Doc. #14. The second petition includes additional pages and expands on Davis’ ineffective assistance of counsel argument. However, it fails to address the R&R’s finding that the original petition was untimely filed. Judge Percy construed the filing as a motion to amend the original petition and denied the motion on June 8, 2020. Doc. #16.

is **DISMISSED with prejudice**, and a certificate of appealability is **DENIED**. A final judgment will be issued accordingly.

SO ORDERED, this 7th day of July, 2020.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE